IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5923 OF 1991

Pandurang Kashinath Keni ... Petitioner

vs

Shri Yashwant Gajanan Mokashi .. Respondent

..

Mr.Jaydeep Deo for Mrs Suhasini Mutalik for Petitioner

Mrs.Vaidehi Kamat for Mr.P.M.Pradhan for Respondent

CORAM : D.G.KARNIK, J

DATE: 18TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner-landlord challenges the judgment and order dated 4th July, 1991 passed by the learned VIIth Additional District Judge, Thane allowing Civil Appeal No. 56 of 1990 and dismissing the petitioner's suit for possession.

2. The petitioner is an owner of the building known as 'Tara Nivas.' There appears to be in all 23 to 24 tenements in the suit building. The respondent is a tenant occypying one tenement of 2 rooms situated on the ground floor at Tara Nivas (hereinafter referred to as the suit premises.) The petitioner filed a suit against the respondent for possession bearing Civil

Suit No. 1047 of 1986 on the grounds of reasonable and bonafide requirement, non user and acquisition of suitable alternate premises by the respondent. By a judgment and order dated 17th November, 1989 the trial court decreed the suit on all the grounds. On appeal, by a judgment and order dated 4th July, 1991 the District Court reversed the judgment of the trial Court and dismissed the petitioner's suit. That judgment is impugned in this petition.

3. The petitioner claims that there are 10 members in his family and he is in possession of only 2 rooms. Therefore he requires the suit premises reasonable and bonafide. The appellate Court held that the appellant was in possession of at atleast 3 tenements of 2 rooms each. Mr. Karkhanis was a tenant in respect of 1 tenement of 2 rooms. During the pendency of the suit Mr. Karkhanis vacated the rented premises and handed over the possession of the tenement in his possession to the petitioner. Mr. Karkhanis was examined as a witness and he deposed on oath about handing over the possession of the tenements in his possession to the petitioner. His evidence has been believed by the appellate Court. In view of the finding recorded by it that the petitioner is in possession of at least 3 tenements of two rooms each, the appellate Court held that it cannot be said that the petitioner required

the suit premises for reasonably and bonafide for himself and his family. The finding recorded by the appellate Court is a possible finding and supported by evidence.

4. As regards acquisition of suitable alternate premises it was contended that the petitioner's son had purchased a block of one room and a kitchen in Pitambar Cooperative Housing Society, Thane. The said block admittedly was purchased by the respondent's son who was about to be married at the time of the purchase. Considering the fact that the suit premises consist of only 2 rooms and that the son was about to be married, there was nothing for the son desiring to have a separate residence and purchasing a small tenement of 1 room and a kitchen for himself. It was not the case of the petitioner that the premises at Pitambar Cooperative Housing Society has been purchased by the respondent in the name of his son. The acquisition of premises by his son cannot be considered to be acquisition of premises by the respondent. The respondent has no right to reside in the premises of his son. Same is the case in respect of the another accommodation alleged to be acquired by the respondent's daughter-in-law during the pendency of the litigation. She is a doctor. She acquired a small block. The respondent cannot claim that as of

right in the flat belonging to his daughter-in-law. Therefore, it cannot be said that the respondent acquired any suitable residential accomodation. The appellate Court has rightly held that the acquisition of premises by the respondent's son and the daughter-in-law cannot be held to be acquisition of premises by the respondent.

5. It was next contended that the respondent was not using the suit premises for the purpose for which they were let out for more than six months prior to the date of institution of the suit. No evidence was adduced of the alleged non-user. No witness was examined to show that the premsies were not used. What was only contended that the suit summons was served on the respondent at the address of the respondent's son and therefore it must be presumed that the respondent was not using the suit premises. There can be no such presumption. Such a service at the most would prove that on the date when the suit summons was served, the respondent was present at the address of his son. In any event, the suit summons was served after institution of the suit and therefore, it is of no relevance to prove that the respondent was not living in the suit premises for a period of six months prior to date of institution of the suit. No other evidence was adduced regarding

non-user. The appellate Court has therefore, rightly set aside the said finding.

6. The findings recorded by the appellate Court are possible and cannot be interfered within exercise of writ jurisdiction under Article 227 of the Constitution of India. Hence, petition is dismissed with costs. Rule discharged with costs.

D.G.KARNIK, J